

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN JOSE WATER COMPANY (U 168 W) for an Order authorizing it to increase rates charged for water service by \$25,793,000 or 18.20% in 2004; by \$5,434,000 or 3.24% in 2005; and by \$5,210,000 or 3.01% in 2006.

Application 03-05-035
(Filed May 23, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
DENYING IN PART THE OFFICE OF RATEPAYER ADVOCATES' MOTION TO
DISMISS THE REQUEST OF THE SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY**

Summary

The Santa Clara Valley Transportation Authority (VTA) requests that San Jose Water Company (SJWC) ratepayers bear up to 50% of certain water main relocation costs. To the extent that the request relies on an alleged assignment of rights by SJWC to VTA, the Office of Ratepayer Advocates' (ORA) motion to dismiss VTA's request is granted. To the extent that the request relies on a benefit analysis to determine equitable cost responsibility, ORA's motion is denied. VTA's request will be addressed in evidentiary hearings, at a date and time to be determined.

Background

On August 13, 2003, VTA filed a Prehearing Conference (PHC) Statement indicating that it would seek ratepayer reimbursement for 100% of its payment to SJWC for the cost of relocating certain water mains during the construction of its

light rail transit facilities on the Tasman, Capitol and Vasona corridors. The PHC was held on August 23, 2003 at which time the details of VTA's request were discussed. Certain aspects were unclear, and pursuant to the September 12, 2003 Assigned Commissioner's Scoping Memo and Ruling, VTA filed a preliminary brief and report on its request.

In its preliminary brief, VTA stated, "Upon an assignment of rights from SJWC, VTA is entitled to participate in this case for the limited purpose of determining whether and to what extent relocation costs can be included into the rate base." VTA's accompanying report on ratemaking states that it is requesting that the Commission direct SJWC to refund VTA's contributions in aid of Construction (CIAC) for the projects, which totaled \$15.7 million to that date, and to direct SJWC to pay the remaining costs of the Vasona relocations. Those reimbursements and remaining costs would then be included in rate base and recovered from ratepayers through increased customer rates.

Both SJWC and ORA responded to VTA's filing. SJWC stated that, through its proposal, VTA is seeking to breach its August 2000 contract with SJWC, and that the Commission should deny the request. ORA stated that VTA has not justified burdening ratepayers with paying for water main relocation costs incurred to build a transit system. ORA asserts that utility ratepayers realize little or no benefit from the relocation.

On November 17, 2003, VTA submitted direct testimony on its proposed rate treatment for water main relocation costs. The testimony modified the preliminary report in requesting that 50%, rather than 100%, of the water main relocation costs be included in rate base and refunded to VTA by SJWC. Also, VTA's analysis indicates that SJWC ratepayers receive a benefit of about 39% of

the total project cost, because the new pipes provide an extended operating life relative to the existing pipes.

On December 8, 2003, SJWC submitted rebuttal to VTA's testimony. SJWC's analysis indicates that 4.0% of the total costs benefit ratepayers. In SJWC's opinion, this incidental benefit does not justify SJWC's ratepayers paying for any of the costs.

On December 29, 2003, ORA filed its motion to dismiss VTA's request, contending that VTA has no standing to request that SJWC's rate base be expanded. ORA asserts that the relocation agreement between SJWC and VTA does not assign VTA the right to seek Commission approval for a rate base increase and, for many reasons, SJWC cannot assign that right to VTA. ORA also expressed an equity concern regarding the benefits of the relocation projects.

On January 16, 2003, VTA argued in response to ORA's motion that whether or not the contract assigns the right for VTA to make its request for a rate base increase, as a matter of law, VTA has the right to be heard.

Discussion

VTA proposes, in substance, that the incremental value of the relocation projects is a ratepayer benefit, and thus ratepayers should pay for the benefit as incremental plant additions in rate base. The general rate case (GRC) is the proceeding for the determination of test year rate base. As such, it is common practice to incorporate more recent data, audit adjustments, and ratemaking adjustments in that determination. VTA's request to adjust rate base, at least on a prospective rate basis, falls within that scope. It should be given the opportunity to be heard on its proposal in this GRC proceeding. Therefore, so far as VTA's request is based on a benefit analysis, ORA's motion to dismiss is denied.

ORA's motion to dismiss is granted, so far as it strikes VTA's assignment of rights theory. SJWC has indicated that no such assignment ever took place, and VTA has provided no plausible, much less convincing, legal basis or argument that supports its position. The alleged assignment of rights will not be considered further in this proceeding.

The various filings to date have raised many issues and concerns that must be addressed by the Commission in determining whether VTA is entitled to any reimbursement for the specified water main relocation costs. The Public Utilities Code, Commission precedents, ratemaking principles, the practices of other utilities, and the benefit analysis to determine equitable cost responsibility are among the factors that will be considered once parties have had the opportunity to conduct cross-examination and to file briefs on this subject. The dates for hearings and briefs on VTA's request will be scheduled after conference with the parties.

IT IS RULED that:

1. The motion of the Office of Ratepayer Advocates to dismiss the request of the Santa Clara Valley Transportation Authority (VTA) with prejudice is granted in part and denied in part.
2. VTA's request that ratepayers bear up to 50% of certain water main relocation costs will be addressed in evidentiary hearings, at a time and date to be determined.

Dated January 29, 2004, at San Francisco, California.

/s/ DAVID K. FUKUTOME
David K. Fukutome
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail and e-mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying in Part the Office of Ratepayer Advocates' Motion to Dismiss the Request of the Santa Clara Valley Transportation Authority on all parties of record in this proceeding or their attorneys of record.

Dated January 29, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.